Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 15 SEPTEMBER 23, 1981 No. 38

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81-237)

Bonds

Approval of Carrier's Bond, Customs Form 3587, amendment of T.D. 81-30

T.D. 81-30 relating to the temporary approval of the Carrier's Bond of the following principal is hereby amended as necessary to show that such bond has been permanently approved as noted below.

Dated: September 2, 1981.

	Effective date of permanent authority
Principal: Don's Trucking, Inc	June 11, 1981

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 81-238)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
August 17–20, 1981	$0. 000197
August 21, 1981	. 000194
Chile peso:	
August 17–21, 1981	$0. 025575

Colombia peso:	
August 17–20, 1981	$0.018242
August 21, 1981	.018018
Greece drachma:	
August 17, 1981	$0.016155
August 18, 1981	.016502
August 19, 1981	.016340
August 20, 1981	.016434
August 21, 1981	.016598
Indonesia rupiah:	
August 17–21, 1981	$0.001582
Israel shekel:	
August 17–21, 1981	$0.080000
Peru sol:	
August 17–21, 1981	$0.002287
South Korea won:	
August 17–21, 1981	$0.001454

(LIQ–03–01 O:C:E)

Dated: August 21, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81–239)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 81–183 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
August 17–18, 1981	$0.010090
August 19–21, 1981	.009902
Hong Kong dollar:	
August 17, 1981	$0.168421
August 18, 1981	.168379
August 19, 1981	.167645

August 20, 1981	.168407
August 21, 1981	.169062
Republic of South Africa rand:	
August 17, 1981	$1.0565
August 18, 1981	1.0572
August 19, 1981	1.0560
August 20, 1981	1.0605
August 21, 1981	1.0630
Spain peseta:	
August 17, 1981	$0.009872
August 18–21, 1981	Quarterly
Thailand baht (tical):	
August 17–21, 1981	$0.043384

(LIQ–03–01 O:C:E)

Dated: August 21, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(19 CFR Part 151)

(T.D. 81–240)

CUSTOMS REGULATIONS AMENDMENTS RELATING TO THE EXAMINATION OF MERCHANDISE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that: (1) at ports of entry specifically designated by the Commissioner of Customs, the district director of Customs is authorized to release, without examination, merchandise of a character which he has determined need not be examined in every instance to ensure the protection of the revenue and enforcement of Customs and other laws; and, (2) the district director shall order the examination of such packages or quantities of merchandise as he deems necessary to ensure compliance with the Customs laws and any other laws enforced by the Customs Service.

The amendments will allow Customs to improve the effectiveness of Customs cargo inspections and to expedite the entry of merchandise.

EFFECTIVE DATE: October 13, 1981.

FOR FURTHER INFORMATION CONTACT: Victor Weeren, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20029 (202–566–5354).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), provides that not less than one package of every invoice and not less than one of every 10 packages of imported merchandise shall be opened and examined. However, if the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that examination of a lesser proportion of packages will amply protect the revenue, by special regulation or instruction, the application of which may be restricted to one or more individual ports, one or more importations, or to one or more classes of merchandise, he may permit a lesser number of packages to be examined.

Section 151.2, Customs Regulations (19 CFR 151.2), implements 19 U.S.C. 1499 by providing that not less than one of every 10 packages of merchandise shall be examined unless a special regulation permits a lesser number of packages to be examined. Section 151.2 further provides that district directors are authorized specially to examine less than one of every 10 packages, but not less than one package of every invoice, in the case of any merchandise imported in packages: (1) the contents and values of which are uniform; or, (2) the contents of which are identical as to character although differing as to quantity and value per package.

Section 151.1, Customs Regulations (19 CFR 151.1), provides that the district director shall examine such packages or quantities of merchandise as he deems necessary for the determination of duties and for other Customs purposes.

To improve the effectiveness of cargo inspections and to expedite the entry of merchandise, Customs published a notice in the Federal Register on November 19, 1980 (45 FR 76449), proposing to amend:

(1) Section 151.2(a) to provide that, at ports of entry specifically designated by the Commissioner of Customs, the district director would be authorized to release, without examination, merchandise of a character which the district director has determined need not be examined in every instance to ensure protection of the revenue and enforcement of Customs and other laws; and,

(2) Section 151.1 to clarify that Customs officers may examine shipments to ensure compliance with any other laws enforced by the Customs Service, as well as with the Customs laws.

The notice invited interested persons to submit comments regarding

the proposal by January 19, 1981. In response, 27 comments were received from individuals, members of Congress, corporations, ports and port authorities, customs brokers, freight forwarders, and trade associations. Of the comments received, 23 unquestionably favor the proposal. These commenters are of the opinion that the change would result in a smoother flow of cargo due to more efficient use of Customs manpower, fewer time delays, and reductions in importer costs, particularly due to fewer demurrage charges.

Three commenters oppose the change. One of the opposing commenters points to the potential for encouraging fraud and collusion because some cargo will not be examined at designated ports.

The potential for fraud always is present. However, Customs is able to control this with its enforcement units—Investigations, Regulatory Audit, Patrol, and Special Enforcement Teams. The commodity knowledge of the import specialists and their participation with Customs enforcement units also are effective in detecting and deterring fraud and deceptive practices. Further, existing automated and manual information systems, as well as those under development, are designed to provide detailed information to aid in this process. These enforcement efforts will not be affected by the adoption of this proposal.

Effective with implementation of these changes, a random percentage of imports will continue to be selected for intensive examination. Also, at any time the district director may order an intensive examination of merchandise which he previously had exempted from examination. In addition, audits will be conducted in ports where this type of selective examination is in operation. Customs is of the opinion that these additional checks will provide deterrence factors.

Another commenter expresses concern that great care must be taken to distinguish between similar types of merchandise which are dutiable at different rates depending on the intended use.

Customs agrees. However, we do not anticipate that this will be a problem because verification of intended use of merchandise is made at the time the merchandise is classified for tariff purposes, not at the time of inspection. This change will not affect that procedure.

The third commenter opposed to the proposal is of the opinion that it exceeds the authority of 19 U.S.C. 1499, because it contemplates the release of merchandise, no part of which has been examined.

After a detailed review of the applicable statutory and case law, Customs has determined that the proposal is within the authority of 19 U.S.C. 1499.

In addition, one commenter, without addressing the desirability of the proposal, questions the legality of delegating this authority to the district director.

Section 2 of Reorganization Plan No. 26 of 1950 eff. July 13, 1950, 15 FR 4935, 64 Stat. 1280) provides that the Secretary of the Treasury may authorize the performance by any other officer, or by any agency or employee, of the Department of the Treasury of any function of the Secretary. This plan was promulgated under the authority of the Reorganization Act of 1949, Pub. L. 109, 81st Cong., 63 Stat. 203, section 3 of which specifically authorized the President to authorize any officer to delegate any of his functions if that would promote more effective management, promote economy or increase the efficiency of the executive branch of Government.

Customs is of the opinion that the effect of the Reorganization Act of 1949 and Reorganization Plan No. 26 of 1950 is to permit the Secretary to delegate to subordinate officers the determination that examination of a less proportion of packages will amply protect the revenue as provided in the statute.

EXECUTIVE ORDER 12291

Because this will not result in a "major rule" as defined by section 1(b) of Executive Order 12991, the regulatory impact analysis and review prescribed by section 3 of the Executive Order is not required

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of sections 603 and 604 of Title 5, United States Code (as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act") because it was the subject of a notice of proposed rulemaking issued before January 1, 1981, the effective date of the Act.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Information Division, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

ADOPTION OF THE PROPOSED REGULATIONS

The proposed regulations set forth in the notice published in the Federal Register on November 19, 1980 (45 FR 76449), are adopted as set forth below.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: August 27, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

AMENDMENTS TO THE REGULATIONS

Sections 151.1 and 151.2(a), Customs Regulations (19 CFR 151.1, 151.2(a)), are revised to read as follows:

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

SUBPART A—GENERAL

151.1 Merchandise to be examined.

The district director shall examine such packages or quantities of merchandise as he deems necessary for the determination of duties and for compliance with the Customs laws and any other laws enforced by the Customs Service.

151.2 Quantities to be examined.

(a)(1) *Minimum quantities.* Not less than one package of every 10 packages of merchandise shall be examined, unless a special regulation permits a lesser number of packages to be examined. District directors are specially authorized to examine less than one package of every 10 packages but not less than one package of every invoice, in the case of any merchandise which is:

(i) Imported in packages the contents and values of which are uniform, or

(ii) Imported in packages the contents of which are identical as to character although differing as to quantity and value per package.

(2) *Exceptions to minimum quantities.* At ports of entry specifically designated by the Commissioner of Customs, the district director is authorized to release, without examination, merchandise of a character which the district director has determined need not be examined in every instance to ensure the protection of the revenue and compliance with the Customs laws and any other laws enforced by the Customs Service.

(R.S. 251, as amended, secs. 499, 624, 46 Stat. 728, as amended, 759, General Headnotes 11, 12, Tariff Schedules of the United States (19 U.S.C. 66, 1202, 1499, 1624))

[Published in the Federal Register September 10, 1981 (46 FR 45128)]

(T.D. 81-241)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued March 3, 1980, to September 1, 1981, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

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In the synopses below are listed for each drawback rate approved under section 1313(g), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

Dated: September 4, 1981.

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(A) Company: Bender Shipbuilding and Repair Co., Inc.
Vessels: Tugs; tug supply boats; supply boats; offshore oil vessels; cargo vessels; passenger vessels; fishing vessels.
Merchandise: Main and auxiliary machinery such as engines, gears, pumps, propellers, winches, capstans; electrical equipment; life saving and fire fighting equipment; other equipment not including that not required for safe operation of vessel, such as galley and office equipment.
Shipyard: Mobile, AL.
Statement signed: February 5, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New Orleans, April 14, 1980.

(B) Company: Desco Marine, Division of the Whittaker Corp.
Vessels: Trawlers.
Mechandise: Four each radio telephones; radar units; echo sounders.
Shipyard: St. Augustine, FL.
Statement signed: May 4, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, September 1, 1981.

(C) Company: Lee-Vac, Ltd., Zigler Shipyards Division.
Vessels: Offshore tugs and supply vessels.
Merchandise: Machinery and other equipment, but not including galley and office equipment and other articles not required for safe operation of vessels.
Shipyard: Jeff Davis Parish, LA.
Statement signed: December 13, 1979.

Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New Orleans, March 3, 1960.

(D) Company: Swiftships, Inc.
Vessels: Offshore tugs and supply vessels; patrol boats; ferry boats.
Merchandise: Main and auxiliary machinery such as engines, gears, pumps, propellers, winches, capstans, etc.; electrical equipment; miscellaneous equipment such as life saving and fire fighting, not to include that not required by law for the safe operation of vessel, such as galley and office equipment.
Shipyard: Morgan City and Lafitte, LA.
Statement signed: March 25, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New Orleans, April 14, 1980.

(T.D. 81-242)

Accelerated Payment for Same Condition Drawback

The Customs Service will allow persons who claim drawback under the recently enacted same condition drawback law, Pub. L. 96–609, 94 Stat. 3555 (December 28, 1980), codified as 19 U.S.C. 1313(j), to obtain accelerated payment of drawback if certain conditions are met.

In a ruling (file No. 212709) dated March 26, 1981, published as a legal determination, L.D. 81–0126, and which will be published in the CUSTOMS BULLETIN as a C.S.D., the Customs Service noted that, by its very terms, the provisions of section 22.20a of the Customs Regulations applied to claims made under the manufacturing drawback law 19 U.S.C. 1313 (a) and (b). At the time of the ruling, same condition drawback had existed for about three months, and no reason had been presented to warrant amendment of section 22.20a to expand the accelerated payment program.

The accelerated payment program was established to alleviate cash-flow problems associated with the liquidation of recurring, similar drawback claims. 37 FR 20951. Unlike rejected merchandise drawback under 19 U.S.C. 1313(c), and similar to manufacturing drawback 19 U.S.C. 1313 (a) and (b), same condition drawback is designed to stimulate claims for drawback on a recurring basis. This is evident from the Congressional expressions of intent contained in H. Rept. 96-1109, 17 (1980) and S. Rept. 96–999, 23 (1980). Same condition drawback was to supplement the procedures provided by the laws on temporary importations under bond, Customs bonded warehouses, and foreign-

trade zones. The underlying intent of both manufacturing drawback and same condition drawback is to encourage United States business in export trade. That intent is accomplished in both instances by allowing a refund of duty if dutiable foreign merchandise is exported within specified time periods after importation.

In view of the similarities in processing claims under 19 U.S.C. 1313 (a) and (b) and 19 U.S.C. 1313(j) and the underlying purpose of those provisions, the Customs Service is persuaded that claimants of same condition drawback should be allowed to participate in an accelerated payment program. In order to expedite granting of this benefit the procedures set forth in section 22.20a will be used where possible. Any requirement in that section which is applicable to a claim under manufacturing drawback or same condition drawback is to be used. Requirements in section 22.20a which have relevance to claims for manufacturing drawback only are to be disregarded in processing same condition drawback claims. For example, the requirement that an applicant for accelerated payment secure its performance by posting an appropriate bond or bond rider is applicable to both types of drawback, as is the requirement for proving timely exportation. The requirement for proving that a manufacture or processing occurred applies only to a claim for manufacturing drawback. Further, if the Regional Commissioner of Customs determines that a claimant is delinquent or otherwise remiss in any transaction with Customs, the claimant is not eligible for accelerated payment of drawback.

Before accelerated payment for same condition drawback is approved, a claimant must satisfy the Regional Commissioner of Customs that the claimant's recordkeeping procedures will show that (1) the identity of the imported merchandise will be maintained on any merchandise which forms the basis of the claim, (2) any use of the merchandise will be recorded (for example, the recordkeeping procedures must be designed to record any movement of the merchandise in or out of storage), (3) any change in condition in the merchandise will be recorded, (4) the dates of importation, entry, and exportation of the merchandise will be recorded, and (5) the importer—exporter will satisfy the examination requirements of the importing and exporting Regions.

Unlike the situation in manufacturing drawback claims, there is no manufacturer's statement under claims for same condition drawback. In order to apply for accelerated payment under same condition drawback, a claimant must satisfy the Regional Commissioner of Customs that the claimant's recordkeeping procedures will meet the above five listed requirements. The Regional Commissioner will approve or deny the application for eligibility for accelerated payment of same condition drawback after reviewing the claimant's

recordkeeping procedures. Until approval of the recordkeeping procedures is given, no claim for accelerated payment of same condition drawback can be accepted for processing in accordance with the procedure set forth in section 22.20a. With respect to each drawback claim thereafter, the Regional Commissioner of Customs must determine whether a claimant is delinquent or otherwise remiss in any transaction with Customs before approving that claim.

This procedure is to be applied to applications for permission to participate in the accelerated payment program for same condition drawback filed after the date of publication of this notice in the CUSTOMS BULLETIN.

(DRA-1)
Dated: September 4, 1981.

GEORGE C. STEUART
(For Marilyn G. Morrison, Director
Carriers, Drawback and Bonds Division).

(19 CFR Parts 18 and 112)

(T.D. 81-243)

CARRIERS, CARTMEN, LIGHTERMEN; CUSTOMS REGULATIONS AMENDMENTS RELATING TO THE CARRIAGE OF BONDED MERCHANDISE BY PRIVATE CARRIERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to simplify the requirements that a private carrier must meet to be designated as a carrier of bonded merchandise. The amendment provides that a private carrier may be designated as a carrier of bonded merchandise if (1) the merchandise (including containerized merchandise) to be transported is the property of the private carrier, and (2) the private carrier files a proper Customs bond. Conforming amendments are also set forth.

EFFECTIVE DATE: October 14, 1981.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Donald F. Beach, Carriers, Drawback and Bonds Division (202-566-5856), Operational Aspects: Bradley Lund, Inspection and Control Division (202-566-5354), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 27, 1980, a notice of proposed rulemaking was published in the Federal Register (45 FR 70907), requesting comments from the public concerning proposed Customs Regulations amendments to simplify Customs requirements which a private carrier must meet to be designated as a carrier of bonded merchandise.

Section 551, Tariff Act of 1930, as amended (19 U.S.C. 1551), provides that in the discretion of the Secretary of the Treasury, a private carrier, upon application, may be designated as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms and conditions, as the Secretary may prescribe to safeguard the revenue of the United States with respect to the transportation of bonded merchandise by the applicant.

Section 112.11(a)(4), Customs Regulations (19 CFR 112.11(a)(4)), provides that district directors of Customs may authorize a private carrier to receive and transport imported merchandise in bond if:

(i) The private carrier is the proprietor of a Customs bonded warehouse or bonded container station;

(ii) The merchandise (including containerized merchandise) to be transported is his property, having been imported by him or purchased from another importer; and

(iii) The merchandise is to be transported:

(A) From the port of importation, or port where entered for warehouse, to the private carrier's Customs bonded warehouse or bonded container station for physical deposit;

(B) From the private carrier's Customs bonded warehouse or bonded container station to another Customs bonded warehouse for physical deposit; or

(C) If for exportation, from the private carrier's Customs bonded warehouse or bonded container station to a Customs bonded warehouse at the port of exportation.

Customs believes that the present requirements in section 112.11 (a)(4), which must be met by an applicant before being designated as a private carrier of bonded merchandise, are needlessly restrictive. The goal of these requirements, as set forth in 19 U.S.C. 1551, is to safeguard the revenue. Requiring a private carrier to be a proprietor of a Customs bonded warehouse or bonded container station and restricting a private carrier to transporting merchandise to or from the private carrier's bonded warehouse or bonded container station are not necessary to accomplish this goal, and severely limit the number of carriers able to qualify as carriers of bonded merchandise. The

carrier's bond and security requirements concerning container stations in sections 19.40–19.49, Customs Regulations (19 CFR 19.40–19.49), are considered adequate to protect the revenue if the private carrier is restricted to carrying property which it owns.

Accordingly, the notice proposed to amend section 112.11(a)(4) by deleting the requirements in subparagraphs (i) and (iii), and by providing that a private carrier may be designated as a carrier of bonded merchandise if (1) the merchandise (including containerized merchandise) to be transported is the property of the private carrier (present subparagraph (ii)), and (2) the private carrier files Customs Form 3588, "PRIVATE CARRIER'S BOND."

The deletion of the requirements in subparagraphs (i) and (iii) will allow a private carrier's vehicles, which now return empty to company locations after delivering merchandise at ports of export, to load imported merchandise for shipment under the bond for exportation or transportation or for transportation and exportation (Customs Forms 7557, 7559). Private carriers also will be able to deliver their bonded merchandise by the most direct route.

On the basis of the requirement in present section 112.11(a)(4) that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded merchandise, section 112.12(b)(3), Customs Regulations (19 CFR 112.12(b)(3)), provides that if a private carrier is the proprietor of Customs bonded warehouses in two or more Customs districts to which imported merchandise will be transported, he shall file Customs Form 3588, "PRIVATE CARRIER'S BOND," with the district director for one of the districts, accompanied by a statement showing the location of each warehouse and an additional copy of the bond for each additional district.

Accordingly, it was proposed to amend section 112.12(b)(3) to conform to the amendment of section 112.11(a)(4) which would delete the requirement that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded merchandise. Section 112.12(b)(3) would be amended to provide that the private carrier shall file Customs Form 3588 with the district director in the district where the private carrier intends to operate. If the private carrier intends to operate in two or more districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations to which imported merchandise will be transported, he shall accompany the bond and copies

of the bond by a statement showing the location of each warehouse and container station.

The notice also proposed to amend section 18.2(e), Customs Regulations (19 CFR 18.2(e)), to conform to the proposed amendment to section 112.11(a)(4). Presently, section 18.2(e) provides that an entry for immediate transportation in bond by a private carrier shall be accompanied by a commercial invoice setting forth the particulars of the merchandise and a statement verified by the district director of the district in which the private carrier's warehouse is located requesting permission to transport the merchandise to the private carrier's warehouse. Section 18.2(e) also sets forth a sample statement whereby the warehouse proprietor and carrier requests the permission of the district director to transport the merchandise described in the invoice from the port to his warehouse.

DISCUSSION OF COMMENTS

The three comments received in response to the notice were, in general, in favor of relaxing the restrictions on private carriers. Two commenters recommended expanding the proposed relaxation of restrictions.

Specifically, both commenters were of the opinion that section 18.2(e) should be amended or deleted in its entirety because it imposes unnecessary costs and delays on private carriers who are bonded to carry their own merchandise. For example, one of the commenters indicated that because of the different billing systems used by foreign vendors, the commercial invoice is not always available at the time the shipment is placed in bond. In fact, some commercial invoices are not available for several days or even weeks after the shipment is placed in bond. The commenter expressed the view that to require a shipment to remain on the pier until a commercial invoice is available would result in unnecessary detention expense and also subject the shipment to potential general order storage (pursuant to section 4.37, Customs Regulations (19 CFR 4.37)), if the shipment is not entered within five days of the date of entry of the vessel on which the shipment arrived.

In addition, one of the commenters expressed the view that the request in the verified statement under section 18.2(e) for "permission to transport" from the district director of the district to which the merchandise will be carried would deter private carriers from carrying bonded merchandise. For example, because many shipments arrive at ports without advance notice, the coordination of these requests for permission from the district director and the dispatching of trucks for pick-up would be nearly impossible, and would cause, in many instances, several days delay to the private carrier. As a

result, possible detention charges and loss of time to the carrier could cause a private carrier to forego the benefits of private carriage.

Customs agrees with the views expressed by the commenters regarding section 18.2(e), and is of the opinion that the private carrier's bond adequately protects the revenue and that requiring the carrier to furnish a verified statement accompanied by a commercial invoice is unnecessary. Accordingly, section 18.2(e) has been deleted.

Also, one of the commenters asked whether a private carrier will be required to obtain a bond for transportation and exportation (Customs Form 7559), if the carrier intends to ship merchandise for both transportation and subsequent exportation, as well as the private carrier's bond (Customs Form 3588). In addition, another, commenter questioned the necessity of filing a private carrier's bond pursuant to section 112.12(b)(3), with the district director in one district and a copy of the bond (with a list of all Customs districts in which the carrier intends to operate) with each district director in the districts in which the carrier intends to operate. The commenter believes that this requirement is being maintained by Customs so that each district in which the private carrier operates will know that the carrier is properly bonded. Because many private carriers operate nationwide, the commenter feels that large scale mailing could be avoided by simply adding the private carriers to the list of bonded common carriers and verifying in the same manner as common carrier bonds are verified.

In response to the first question, it is Customs position that a private carrier must obtain a bond for transportation and exportation shipments (Customs Form 7559) in addition to the private carrier's bond (Customs Form 3588), inasmuch as the private carrier's bond does not presently cover transportation and exportation movements. It should be noted that the private carrier's bond, like the common carrier's bond, does cover immediate transportation bond shipments. With respect to the inquiry concerning section 112.12(b)(3), Customs Headquarters is currently exploring the possibility of adding bonded private carriers to the list of bonded common carriers, thereby enabling Customs to verify private carrier bonds in the same manner as common carrier bonds. Presently, holders of common carrier bonds are published in the CUSTOMS BULLETIN and are ordinarily verified by Customs districts using the CUSTOMS BULLETIN or the Automated Bond Information System ("ABIS"). Until such time as Customs has developed a cost-effective and feasible method for adding existing as well as future holders of private carrier bonds to the list of holders of common carrier bonds, the present requirements under section 112.12 (b)(3) must be maintained.

In view of the comments received in response to the notice, Customs

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is adopting the amendments as proposed, with the exception of the proposed amendment to section 18.2(e). Section 18.2(e) is deleted.

It should be noted that the above amendments do not affect Customs requirements relating to the transportation of merchandise in bond by bonded common carriers, contract carriers, or freight forwarders.

EXECUTIVE ORDER 12291

Because this will not result in a "major" rule as defined by section 1(b) of E.O. 12291, the regulatory impact analysis and review prescribed by section 3 of the E.O. is not required.

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of 5 U.S.C. 603 and 604 (as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act"), because it was the subject of a notice published in the Federal Register before January 1, 1981, the effective date of the Act.

DRAFTING INFORMATION

The principal author of this document was Robert J. Pisani, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENTS TO THE REGULATIONS

Parts 18 and 112, Customs Regulations (19 CFR Parts 18, 112), are amended as set forth below.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: August 31, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

In section 18.2, paragraph (e) is removed.

* * * * * * *

(R.S. 251, as amended, sections 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759 (19 U.S.C. 66, 1551, 1565, 1624))

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. Section 112.11(a)(4), Customs Regulations (19 CFR 112.11(a)(4)), is amended to read as follows:

§ 112.11 CARRIERS WHICH MAY BE AUTHORIZED.

(a) *From port to port in the United States.* The district director may authorize the following types of carriers to receive merchandise for transportation in bond from one port to another in the United States upon compliance with the provisions of this subpart:

* * * * * * *

(4) Private carriers, if:

(i) The merchandise (including containerized merchandise) to be transported is the property of the private carrier; and (ii) the private carrier files Customs Form 3588, "Private Carriers Bond".

2. Section 112.12(b)(3), Customs Regulations (19 CFR 112.12 (b)(3)), is amended to read as follows:

§ 112.12 APPLICATION FOR AUTHORIZATION.

* * * * * * *

(b) *Special requirements.* In addition to the requirements in paragraph (a) of this section, the specified carriers shall also file with the district director the following documents:

* * * * * * *

(3) *Private carriers.* The private carrier shall file the bond with the district director in the Customs district where the private carrier intends to operate. If the private carrier intends to operate in two or more Customs districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all Customs districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station.

(R.S. 251, as amended, sections 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759 (19 U.S.C. 66 1551, 1565, 1624))

[Published in the Federal Register, Sept. 14, 1981 (46 FR 45600)]

(T.D. 81-244)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below.

The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Argentina peso:	
August 24–28, 1981	$0.000194
Chile peso:	
August 24–28, 1981	$0.025575
Colombia peso:	
August 24–27, 1981	$0.018018
August 28, 1981	.017963
Greece drachma:	
August 24, 1981	$0.016681
August 25, 1981	.016340
August 26, 1981	.016434
August 27, 1981	.016488
August 28, 1981	.016502
Indonesia rupiah:	
August 24–28, 1981	$0.001582
Israel shekel:	
August 24, 1981	$0.079114
August 25, 1981	.079365
August 26, 1981	.079114
August 27, 1981	.079051
August 28, 1981	.078064
Peru sol:	
August 24–28, 1981	$0.002287
South Korea won:	
August 24–28, 1981	$0.001454

(LIQ-03-01 O:C:E)

Dated: August 31, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

(T.D. 81-245)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to Section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from

the quarterly rate published in Treasury Decision 81–183 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
August 24–25, 1981	$0.009902
August 26–28, 1981	.009738
Hong Kong dollar:	
August 24, 1981	$0.168719
August 25, 1981	.167364
August 26, 1981	.168152
August 27, 1981	.168011
August 28, 1981	.168606
Republic of South Africa rand:	
August 24, 1981	$1.0630
August 25, 1981	1.0543
August 26, 1981	1.0580
August 27, 1981	1.0590
August 28, 1981	1.0580
Thailand baht (tical):	
August 24–28, 1981	$0.043384

(LIQ–03–01 O:C:E)

Dated: August 31, 1981.

KENNETH A. RICH,
Acting Chief,
Customs Information Exchange.

U.S. Customs Service

Proposed Rulemaking

(19 CFR Part 162)

INSPECTION, SEARCH, AND SEIZURE OF VESSELS BY CUSTOMS OFFICERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the boarding and search of vessels to: (1) permit Customs officers to board American vessels on the high seas for the purpose of examining the manifest and other documents and papers and examining, inspecting, and searching these vessels without first making a determination that there is probable cause to believe that such vessels are violating or have violated the laws of the United States; and (2) provide that Customs officers are authorized to assist any other agency in the enforcement of United States law on any vessel.

The proposed changes are designed to remove a potentially unnecessary barrier to the effective enforcement of customs and navigation laws consistent with constitutional and statutory principles.

DATE: Comments must be received on or before (60 days from the date of publication in the Federal Register).

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations and Information Division, Room 2426, 1301 Constitution Avenue, NW., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Dennis Cronin, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229 (202–566–5476).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 162.3(a), Customs Regulations (19 CFR 162.3(a)), states in part that a Customs officer, for the purposes of examining the manifest and other documents and papers and examining, inspecting, and searching the vessel, may at any time go on board:

(1) Any vessel at any place in the United States or within the Customs waters of the United States;

(2) Any American vessel on the high seas, when there is probable cause to believe that such vessel is violating or has violated the laws of the United States.

The statutory authority for this regulation is section 581(a), Tariff Act of 1930, as amended (19 U.S.C. 1581(a)). However, recent judicial decisions, *United States* v. *Dominguez*, 604 F. 2d 304 (4th Cir. 1979), and *Untied States* v. *Warren*, 578 F. 2d 1058 (5th Cir. 1978) (*en banc*), *rev'g*, 550 F. 2d 219 (5th Cir. 1977), regarding 14 U.S.C. 89, which is substantially similar to 19 U.S.C. 1581(a), conclude that 14 U.S.C. 89 authorizes Coast Guard officers to board American vessels on the high seas without probable cause. These decisions, coupled with the absence of any constitutional or statutory requirement that probable cause be present before Customs officers board American vessels on the high seas, warrant the removal of the probable cause requirement from section 162.3.

Further, Customs frequently is called upon to assist other agencies in the enforcement of United States law upon vessels. In many instances, the statutes authorizing these agencies to seek assistance are similar to 14 U.S.C. 141(b), which states that "The Coast Guard, with the consent of the head of the agency concerned, may avail itself of such officers and employees, advice, information, and facilities of any Federal agency * * * as may be helpful in the performance of its duties."

Customs has determined that it would be advantageous to provide standing authority for Customs officers to assist officers of other agencies in enforcing the laws of the United States on any vessel instead of requiring the consent of the Commissioner of Customs on a case-by-case basis.

The present situation of massive smuggling of contraband by vessel and the need for swift and effective law enforcement response convinces Customs that it must not restrict its lawful authority to enforce the law with respect to American vessels on the high seas.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs.

Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Information Division, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229.

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

Because the proposed changes are enforcement measures, the amendment is not expected to; have significant secondary or incidental effects on a substantial number of small entities; impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities; or generate significant interest or attention from small entities through comments, either formal or informal.

Accordingly, the proposed amendment does not require a regulatory flexibility analysis under the provisions of Pub. L. 96–354, the "Regulatory Flexibility Act" (5 U.S.C. 601, *et seq.*).

AUTHORITY

These changes are proposed under the authority of R.S. 251, as amended, secs. 455, 581, 46 Stat. 716, as amended, 747, as amended; 19 U.S.C. 1455, 1581.

DRAFTING INFORMATION

The principal author of this document was Robert J. Pisani, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS

It is proposed to amend section 162.3, Customs Regulations (19 CFR 162.3), in the following manner:

1. Section 162.3(a)(2) would be amended to read as follows:

162.3 Boarding and search of vessels.

(a) * * *

(1) * * *

(2) Any American vessel on the high seas; or

* * * * * * *

2. A new paragraph (c) would be added to section 162.3 to read as follows:

(c) *Assistance of other agencies.* Customs officers are authorized to assist any other agency in the enforcement of United States laws on any vessel.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved: August 26, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

Published in the Federal Register, Sept. 14, 1981 (46 FR 45626).

(19 CFR Part 101)

Proposed Changes in the Field Organization of the Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This notice proposes to change the field organization of the Customs Service as follows:

1. In the New Orleans Region, (a) establish a new Customs port of entry at Gramercy, Louisiana; and (b) revoke the designation of Gramercy, Louisiana, as a Customs station.

2. In the San Francisco Region, (a) revoke the designation of Annette Island and Tok, Alaska, as Customs stations under the jurisdiction of the Juneau, Alaska, district; (b) transfer jurisdiction of the Customs stations of Eagle, Haines, and Hyder from the Juneau to the Anchorage, Alaska, district; (c) revoke the designation of Kodiak, Pelican, Petersburg, and Sand Point, Alaska, as Customs ports of entry; and (d) designate Kodiak, Pelican, Petersburg, Barrow, Dutch Harbor, Fort Yukon, Kaktovik, Kenai, and Northway, Alaska, as Customs stations under the jurisdiction of the Anchorage, Alaska, district.

These changes are part of a continuing program to obtain more efficient use of Customs personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATES: Comments must be received on or before: (60 days from date of publication in the Federal Register).

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

GRAMERCY, LOUISIANA

Gramercy, Louisiana, is currently a very busy Customs station in the New Orleans, Louisiana, Customs region (Region V). In reviewing the application of the South Louisiana Port Commission for designation of Gramercy as a Customs port of entry, Customs has found that the workload at this station has increased significantly over the past few years and now far exceeds the established workload standards used by Customs for creating a new port of entry. The Gramercy station now handles more than 2,000 cargo vessels annually. The minimum requirement recommended in Customs workload standards is 250 cargo vessels annually.

Accordingly, to provide the most economical and efficient service to the public and to meet the expanded needs of the importing community in the Gramercy area, it is proposed to establish Gramercy, Louisiana, as a new port of entry in the New Orleans, Louisiana, Customs district.

The port limits of the proposed port of entry at Gramercy, Louisiana, would include that portion of the Parishes of St. Charles, St. John the Baptist, and St. James, lying within the area bounded on the East where the longitude line of 90°27′30″ intersects on the North at the latitude line of 30°06′ and intersects on the South at the latitude line of 29°57′, and bounded on the West where the longitude line of 90°54′ intersects on the North at the latitude line of 30°06′ and intersects on the South at the latitude line of 29°57′.

JUNEAU AND ANCHORAGE, ALASKA

As part of a general revision of the Customs Regulations, by T.D. 77–241, published in the Federal Register on October 5, 1977 (42 FR 54274), Part I of Title 19, Code of Federal Regulations (19 CFR Part I), which sets forth the general provisions relating to the operation of the Customs Service including a listing of the Customs regions, districts, ports, and stations, was replaced with a new Part 101 (19 CFR Part 101).

One of the changes set forth in T.D. 77–241 was to amend section 101.4, Customs Regulations, to indicate that Annette Island, Eagle, Haines, Hyder, and Tok, Alaska, were Customs stations in the Anchorage, Alaska, district. Even though this change, which was made to reflect the transfer of the district office from Juneau to Anchorage, was published in the Federal Register, the amendment to

section 101.4 was never made and that section still incorrectly indicates that these Customs stations are in the Juneau district. Accordingly, it is proposed to amend section 101.4 to indicate that these Customs stations are in the Anchorage district, rather than in the Juneau district.

In order to increase management effectiveness and adjust to the changing traffic patterns in Anchorage, Alaska, it is now considered desirable to abolish rather than transfer Annette Island and Tok as Customs stations. Further the abolishment of the Customs stations at Annette Island and Tok is warranted by the fact that neither station has been staffed by Customs for some time now due to lack of requests for services. To provide the most economical and efficient service to the public and to meet the expanding needs of the importing public in the Anchorage area, it is also proposed to abolish Kodiak, Pelican, Petersburg, and Sand Point as ports of entry in Anchorage, Alaska, and designate Kodiak, Pelican, and Petersburg as Customs stations in the Anchorage district. All of these areas have peak activity during the summer fishing season and little or no activity at other times. Because there is relatively little activity at these locations at other times, it is not practical or feasible that they be retained as Customs ports of entry, but rather that they be designated as Customs stations. The workload at Sand Point is so small, it would not even be practical to retain it as a Customs station.

The result of the changes in section 101.4 is to abolish two Customs stations, Annette Island and Tok, Alaska, and to designate Customs stations in the Anchorage district as follows:

District	Customs stations	Port of entry having supervision
Anchorage, Alaska	Barrow, Alaska	Fairbanks.
	Dutch Harbor, Alaska	Anchorage.
	Eagle, Alaska	Alcan.
	Fort Yukon, Alaska	Fairbanks.
	Haines, Alaska	Dalton Cache.
	Hyder, Alaska	Ketchikan.
	Kaktovik (Barter Island), Alaska	Fairbanks.
	Kenai (Nikiski,) Alaska	Anchorage.
	Kodiak, Alaska	Anchorage.
	Northway, Alaska	Alcan.
	Pelican, Alaska	Juneau.
	Petersburg, Alaska	Wrangell.

These changes will update the description of the Alaska Customs field organization in the Customs Regulations. They will also help

Customs to use its resources more effectively by abolishing Customs ports and stations which are no longer needed and by creating new stations where they are needed.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229.

EXECUTIVE ORDER 12291

These proposed amendments do not meet the criteria for a "major" regulation as defined by section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act Pub. L. 96–354, 5 U.S.C. 601, et seq.), the Secretary of the Treasury has determined that if promulgated, the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Customs routinely establishes, expands, and eliminates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this proposal may have a limited effect upon some small entities in the affected areas, it is not expected to be significant because the establishment of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act.

AUTHORITY

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (46 FR 9336).

DRAFTING INFORMATION

The principal author of this document was Barbara E. Whiting, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: August 31, 1981.

JOHN P. SIMPSON,
Assistant Secretary of the Treasury.

[Published in the Federal Register, Sept. 14, 1981 (46 FR 45625)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. These copies will be made available at a cost to the requester of $0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the Customs Bulletin, through February 2, 1981 are available in microfiche format at a cost of $30.90 ($0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: September 8, 1981.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

Date of decision	File No.	Issue
7–23–81	061049	Classification: chimney liner classifiable as a paint (474.30, 798.00)
7–23–81	065566	Classification: hinges, gates, and fence components (647.03, 653.02, 657.25)
7–23–81	065600	Classification: printed brochures (270.45, 270.50, 270.85)
7–23–81	065621	Classification: plastic adhesive bandages with non-medicated pads (389.62, 495.05, 774.55)
8– 4–81	065657	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065719	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065720	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065721	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065874	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065878	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065879	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065880	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	065953	Classification: men's protective leg type tie boot (application of American Selling Price)
8– 4–81	068398	Classification: protective boots (700.60)
6–30–81	068437	Classification: unfinished cab chassis for off-highway 85 ton dump truck (692.20)
8– 6–81	068548	Classification: small plastic balls (735.12, 741.25)
8– 3–81	068586	Classification: linen handbags (706.20)
7–10–81	068682	Classification: ornamented women's rear patch pocket (382.00)
6–30–81	068704	Classification: yarn (310.60)
7–15–81	068713	Classification: white chocolate not classifiable as a confectionery (183.00, 118.30, 950.11, 950.19)
8– 6–81	068933	Classification: acrylic gloves of Chinese origin which are sent to the Philippines for application of a leather applique are products of China for tariff classification purposes (207 U.S. 556, 1907)
7–13–81	800874	Classification: woman's woven cotton blouse (382.00)
7–20–81	800891	Classification: painting on silk-polyester material; painting on dried leaves with fiber board backing, both hand-painted (389.30, 389.62, 765.03)
7–13–81	800899	Classification: fabrics and paper (254.85, 345.50, 355.82)
7–17–81	800916	Classification: women's open toe, open back casual shoe (700.51, 700.52, 700.53, 700.56, 700.57, 700.59)
7–13–81	800917	Classification: hot pads (366.79)
7–13–81	800927	Classification: in-house computer system (676.55)

Date of decision	File No.	Issue
7–17–81	800928	Classification: women's shirt (382.06)
7–16–81	800929	Classification: wooden box (204.25)
7–13–81	800932	Classification: monorail trolley (664.10)
7–16–81	800933	Classification: plastic shells containing air freshening and odor absorbing chemicals (772.15)
7–13–81	800940	Classification: coal shiploader (653.00)
7–22–81	800946	Classification: men's knit baseball shirt (380.57, 380.61)
7–13–81	800952	Classification: men's woven shirt (380.84)
7–17–81	800955	Classification: bleached cotton shoddy (300.45, 300.50)
7–13–81	800956	Classification: men's woven cotton denim jeans (380.39)
7–22–81	800957	Classification: plastic sheet made from fibrillated film (744.55)
7–16–81	800962	Classification: pin cushion surrounded with six small china dolls (386.04, 386.09)
7–16–81	800965	Classification: ammonium thiglycolate (425.52)
7–16–81	800974	Classification: ice fishing shelter (731.70)
7–22–81	800977	Classification: children's talking typewriter (676.05)
7–22–81	801002	Classification: remote control model vehicles and separate hand-held transmitters (685.60, 737.15)
7–22–81	801008	Classification: sheet laminating machine (668.02)
8–20–81	105279	Vessels: 46 U.S.C. 289 is intended to protect the coastwise and domestic shipping industry for U.S. ships and can only be modified by legislation or waived in the interest of national defense

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Decisions of the United States Court of International Trade

(Slip Op. 81–76)

REVEREND LESLIE LEE DEAN, PETITIONER

v.

UNITED STATES, RESPONDENT

Court No. 81–5–00668

ORDER

(Dated August 26, 1981)

RE, *Chief Judge:* Upon application by the petitioner on June 15, 1981 and upon the representations contained therein, it is hereby

ORDERED that said application to proceed *in forma pauperis* is granted, and pursuant to section 1915(a) of Title 28, United States Code, the petitioner shall be allowed to proceed without the payment of fees, costs or security therefor; and it is further

ORDERED that, pursuant to section 1915(d) of Title 28, United States Code, Herbert E. Harris II, Esq. and Brian E. McGill, Esq. of the firm Harris, Berg and Creskoff, are hereby appointed to serve without fee and to appear generally for the petitioner, as his attorney and counsellor at law, through all proceedings in this case, unless sooner relieved by order of Court.

(Slip Op. 81–77)

DENNIS P. VANDERLIND, SR., AND UAW LOCAL 548, PLAINTIFFS
v.
UNITED STATES, DEFENDANT

Court No. 81–7–00858

ORDER

(Dated August 26, 1981)

RE, *Chief Judge:* Upon motion by defendant, submitted without objection by plaintiffs, to suspend proceedings in the above-entitled action pending the United States Department of Labor's administrative reconsideration of plaintiffs' petition for certification of eligibility, for adjustment assistance under section 223 of the Trade Act of 1974 upon all other papers and proceedings herein, and for good cause shown, it is hereby

ORDERED that all further proceedings in the above-entitled action are stayed pending a new determination by the United States Department of Labor in its administrative reconsideration of plaintiffs' petition for certification of eligibility for adjustment assistance under section 223 of the Trade Act of 1974, and for a period not to exceed thirty (30) days from the date of issuance of such new determination by the Department of Labor; and it is further

ORDERED that defendant through its counsel shall file with the Court by no later than Tuesday, September 1, 1981, a copy of any letter or other written transmission informing plaintiffs or their counsel of the Department of Labor's decision to administratively reconsider plaintiffs' petition and a copy of any Federal Register notice published containing the substance of the Department of Labor's decision to administratively reconsider plaintiffs' petition; and it is further

ORDERED that defendant through its counsel shall file with the

Court and serve a copy thereof upon plaintiffs' counsel by no later than Tuesday, September 1, 1981, a letter informing the Court of the approximate date of the conclusion of such reconsideration by the Department of Labor; and it is further

ORDERED that defendant through its counsel shall advise the Court of the new determination by the Department of Labor regarding plaintiffs' petition no later than ten (10) days after the date of issuance of that determination.

(Slip Op. 81–78)

GENERAL ELECTRIC COMPANY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 75–1–00274

[Judgment for defendant.]

(Decided: August 26, 1981)

Freeman, Meade, Wasserman & Schneider, Esqs. (*Bernard J. Babb* and *Louis Schneider*, Esqs. at the trial; *Bernard J. Babb* on the brief) for the plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Saul Davis*, Esq., at the trial and on the brief) for the defendant.

NEWMAN, *Judge:* The Court is again called upon to determine the question of what constitutes a "radio receiver" for tariff classification purposes. In this action, plaintiff contests the classification of three articles invoiced as "electronic packs" EP–14, EP–20, and PK–11A, and a fourth article invoiced as an "amplifier pack" TINIB, all of which merchandise was imported from Shannon, Ireland and entered at the port of Chicago, Illinois on May 8, 1973 (Entry No. 148889). The "electronic packs" (chassis) were assessed with duty under the provision in item 685.23, TSUS, modified by T.D. 68–9, for "Solid-state (tubeless) radio receivers" at the rate of 10.4 percentum ad valorem.[1]

Plaintiff claims:

That the chassis are merely parts of radio receivers, and therefore are properly dutiable under item 685.25, TSUS, modified by T.D.

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[1] These imports were classified under item 685.23, TSUS, pursuant to General Interpretative Rule 10(h), TSUS, which reads: "(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, *and whether finished or not finished*". (Emphasis added.)

68–9, as "Other" (than solid-state (tubeless) radio receivers), at the rate of 6 percentum ad valorem;

Alternatively, that the PK–11A is dutiable under the residual provision "Other" in item 685.50, TSUS, modified by T.D. 68–9, at the rate of 7.5 percentum ad valorem; and further that the EP–14 and EP–20 articles should have been assessed under item 688.40, TSUS, modified by T.D. 68–9, as "Electrical articles, and electrical parts of articles, not specially provided for," at the rate of 5 percentum ad valorem, or under item 678.50, TSUS, modified by T.D. 68–9, as "Machines not specially provided for, and parts thereof," at the rate of 5 percentum ad valorem.

The "amplifying packs" were assessed with duty at the rate of 7.5 percentum ad valorem under the provision in item 684.70, TSUS, modified by T.D. 68–9, for "audio-frequency electric amplifiers". Plaintiff argues that the "amplifier packs" are properly dutiable under item 685.32, TSUS, modified by T.D. 68–9, as parts of phonographs at the rate of 5.5 percentum ad valorem.

Defendant concedes that if the chassis are not unfinished radio receivers, they are parts of radio receivers and are properly classifiable under plaintiff's primary claim, viz., item 685.25, TSUS.

I

At the trial, two witnesses testified for plaintiff and one witness was called by defendant. Additionally, plaintiff submitted twelve exhibits and defendant introduced six exhibits.

The pertinent facts may be briefly summarized:

The chassis in their imported condition are not ready or capable of use by the ultimate consumer as radio receivers without further fabrication, and after importation they are combined with other components to produce various stereo component systems and phonographs. Thus, after importation, the EP–14 and EP–20 units are installed in FM/AM/FM multiplex systems containing a tape player and record changer; the PK–11A is incorporated into either an FM/AM/FM multiplex, phonograph combination or a multiplex unit with a record changer. After importation, the TINIB is installed in plaintiff's phonographs.[2]

The EP–14 and EP–20 chassis are completed by the addition of a power transformer, a "jack pack", a power cord, certain internal

[2] After importation, the EP–14 is incorporated into Model SC–3200, which is an FM/AM/FM multiplex unit with an eight track cartridge tape player and a three speed automatic record changer. The EP–20 is incorporated into Models SC–3205 and SC–7300, both of which are FM/AM/FM multiplex units with eight-track cartridge tape players and three speed automatic record changers. The PK–11A is incorporated into either Model SC–1100, which is an FM/AM/FM multiplex, phonograph combination, or Model SC–2000, which is an FM/AM/FM multiplex system with a three-speed record changer. After importation, the TINIB is incorporated into Models V–638 and V–639, which are three-speed record changers.

wiring, a cabinet (or escutcheon), knobs and a calibration scale. Also contained in the consumer product is an 8-track tape player, a record changer, and speakers.

A power transformer serves to reduce normal household current (120 volts) to current that can be utilized by the consumer product, viz., 18 volts or 6 volts. The jack pack allows the electrical connection of the 8-track tape player, record changer and speakers to the amplifier of a chassis. A power cord conducts electricity from a wall socket to the stereo system and also contains an FM antenna. Addition of the internal wiring serves to make connections from the 8-track tape player, the jack pack, the power cord, and the record player to the imported chassis. The function of the escutcheon, knobs, and calibration scale relative to radio reception allows the user to select a particular radio and radio band. The speaker provides audible tones.

To the PK–11A is assembled a power transformer, a power cord, the escutcheon, knobs and a cabinet. A record changer and cartridge are also combined with these articles to arrive at the completed consumer product, to which speakers are then added.

The only additions to the TINIB are a transformer (which is, in essence, an extra winding of the wire of the motor of the record player in which the TINIB is placed), the power cord (which is the plug of the record player), knobs and a speaker (which are essentially the knobs and speaker for the record player).

II

At the outset, we consider the correctness of the Government's classification of the chassis as unfinished radio receivers under item 685.23, TSUS, and General Interpretative Rule 10(h).

Plaintiff maintains that the chassis are not unfinished radio receivers because they are incorporated into stereo systems comprising a combination of a radio, phonograph and tape player, or a combination of a radio and phonograph, and because the chassis were missing significant and substantial parts when imported without which the imports were inoperable as radio receivers: a power transformer, a power cord and loudspeakers. Defendant, however, insists that the missing components do not preclude classification of the chassis as unfinished radio receivers since in their imported condition the chassis were capable of performing the basic functions of a "radio receiver" within the common meaning of that term. Thus, central to the dispute between the parties is a determination of the common meaning of the term "radio receiver".

The lexicographic and technical authorities cited by defendant disclose the following pertinent definitions:

1. *Cooke & Markus, Electronics & Nucleonics Dictionary* (McGraw-Hill, 1960), at 380, 387:

> *Radio Receiver:* A receiver that converts radio waves into intelligible sounds or other perceptible signals.
>
> *Receiver:* The complete equipment required for receiving modulated radio waves and converting them into original intelligence, such as into sounds or pictures, or converting to desired useful information as in a radar receiver.[3]

2. *McGraw Hill Encyclopedia of Science and Technology* (Rev. 1966 ed), at p. 256:

> *Radio Receiver:* The part of a radio communication system which abstracts the desired information from the radio frequency (rf) energy collected by the antenna. All radio receivers must perform three basic functions: selectivity, amplification, and detection.

Moreover, the *Encyclopaedia Britannica* (1970 ed.), Vol. 11, pp. 485–486, *Collier's Encyclopedia* (1978), Vol. 19, at pp. 610–611, and *Encyclopedia Americana* (1973), Vol. 23, at pp. 121gg–121hh, describe the basic components and functions of radio receivers in detail, but do not mention transformers, power cords, speakers, and cabinets, as as among the basic components of radio receivers.

It bears early emphasis that the imported chassis can perform the basic functions of a radio receiver, to-wit, selection, amplification and detection of radio frequency if they are supplied with electric current by the power transformer and the power cord; and there is no dispute that the chassis are dedicated for use as the radio receiver portion of the specified combination stereo systems. The power transformer and power cord, which were not included in the imported chassis and were added to the chassis after importation, relate merely to the electrical power required to operate the chassis (also the entire stereo system whose phonograph and tape player components were assembled in the United States to the radio), and do not relate to radio reception *per se*. Hence, while the power transformers and power cords were added to the chassis after importation, they are not basic components of the radio receiver portion of the final consumer products.

Although this Court has determined that AM/FM tuners imported with power transformers were properly classified as unfinished radio receivers under item 685.23, TSUS (*Symphonic Electronics Corp.* v. *United States*, 72 Cust. Ct. 211, C.D. 4543 (1974)) (*Symphonic I*),

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[3] This definition is essentially the same as those contained in the *McGraw-Hill Dictionary of Scientific and Technical Terms* (1974) and in the *IEE Standard Dictionary of Electrical and Electronics Terms* (1972).

clearly it cannot be inferred from such determination that the lack of a power transformer would preclude classification of the tuners alone as radio receivers. On the contrary, citing the *Encyclopaedia Britannica*, 1970 ed., Vol. 11, pp. 485–86, this Court held in *Symphonic I* that tuner-amplifiers fall within the common meaning of the term "radio receiver".[4] Consequently, in *Symphonic I* this Court made no determination that a power transformer is a basic component of a "radio receiver" within the common meaning of that term.

In *Symphonic Electronics Corp.* v. *United States*, 77 Cust. Ct. 147, C.R.D. 76–5 (1976) (*Symphonic II*), the issue was whether a certain AM/FM/MPX stereo chassis was properly dutiable under item 685.23, TSUS. The imports in *Symphonic II* were the same in all material respects as the tuner-amplifiers that were before the Court in *Symphonic I*, wherein this Court sustained the Government's classification under item 685.23, TSUS. Thus, in both *Symphonic* cases, the imports comprised tuner-amplifiers possessing the basic components and circuitry necessary for the reception of AM, FM and FM stereo multiplex signals, and also possessed sufficient amplifying capability to operate loudspeakers. The imports in both *Symphonic* cases had no cabinet, loudspeaker, control knobs or calibrated station dial, and were designed and intended solely for incorporation into combination radio-phonographs.

In *Symphonic II*, we noted the decision of our Appellate Court in *Montgomery Ward & Co. Inc.* v. *United States*, 61 CCPA 101, C.A.D. 1131, 499 F. 2d 1283 (1974), which held that a cabinet and loudspeaker are basic parts of an electronic organ and therefore the Government's classification of the imported components (which lacked a cabinet and loudspeaker) as an electronic musical instrument under item 725.47, TSUS, was erroneous. Respecting *Montgomery Ward* this Court observed (77 Cust. Ct. 149):

> In essence, plaintiff's position is that my prior decision in *Symphonic* requires a reexamination in light of the subsequent holding of the appellate court in *Montgomery Ward* that a speaker and cabinet are essential components of an electronic organ. Defendant argues that *Montgomery Ward* is distinguishable from the facts disclosed by the incorporated record, and that the prior *Symphonic* case is *stare decisis* inasmuch as there has been no clear and convincing showing of error.

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[4] The *Encyclopaedia Britannica*, 1970 ed., Vol. 11, pp. 485–86, cited in *Symphonic I*, states: "A 'tuner' is employed for reception of radio broadcasts. The hi-fi tuner is simply a refined version of a radio receiver, but without audio amplifier or loudspeaker * * * [W]hen a radio tuner is combined with an integrated amplifier, the resulting unit is referred to as a 'receiver'." It may also be noted that in *Symphonic I*, both plaintiff's and defendant's witnesses testified that the basic components of a "radio receiver" are a tuner and amplifier, and agreed that "radio receivers" do not necessarily include loudspeakers. Interestingly, the first radio receiver, demonstrated by Heinrich Hertz in Germany in 1887, consisted simply of an open wire loop with spheres attached to the ends to form a gap. The presence of radio waves was "detected" by observing a spark set up on the sphere gap. See *Encyclopaedia Britannica*, 1970 ed., Vol. 18, p. 1090.

> While a cabinet and loudspeaker are essential components of an *electronic organ* (*Montgomery Ward*), the issue in the instant case is whether such components are essential to a *radio receiver* within the common meaning of that term. [Emphasis in original decision.]

In *Symphonic II*, the parties' cross-motions for summary judgment were denied because there was a factual dispute concerning the essential elements of a radio receiver, as that term is commonly understood in the electronics industry; and a dispute concerning whether a stereo "chassis" or tuner-amplifier was commonly regarded and sold in the trade as a "radio receiver". Nevertheless, as respecting loudspeakers, this Court commented (77 Cust. Ct. 153):

> It is apparent from the foregoing quoted excerpts from the stenographic transcript that concerning the essential elements of a "radio receiver" as it is known in the trade, Freeland's testimony sharply conflicts with that of Mergner and Kulinyi, except possibly with respect to loudspeakers, which all three witnesses seem to agree are not essential components of a receiver *per se*. Radio receivers are of such widespread and well known use that the court may take judicial notice of the fact that they are sold both with and without loudspeakers, and that frequently speaker systems are used with receivers that are not only external to the cabinet housing the receiver, but frequently are located at remote locations from the receiver itself.

Here, plaintiff's contention that the absence of loudspeakers precludes classification of the chassis as radio receivers is without merit. The common meaning of the term "radio receiver", unlike the meaning of the term "electronic organ", does not require a loudspeaker as an integral component. Indeed, it is common knowledge that radio receivers and loudspeakers for stereo systems are advertised and sold as separate components in the consumer electronics trade.

In *Symphonic I*, the tuner-amplifiers in issue were held properly classified under item 685.23, TSUS, although imported without loudspeakers. Similarly here, I conclude that the absence of loudspeakers was not fatal to the Government's classification of the chassis under item 685.23, TSUS.

While the essentiality of the power transformer and power cord to the operation of the chassis as radio receivers cannot be denied, the lack of these components does not preclude the application of General Interpretative Rule 10(h) to item 685.23, since the chassis are substantially complete radio receivers. Whether merchandise is substantially complete "does not depend merely on the presence or absence of an essential part". *Daisy-Heddon, Div. of Victor Comptometer Corp.* v. *United States*, 66 CCPA 97, 102, C.A.D. 1228, 600 F. 2d 799 (1979). The several definitions of "radio receiver" cited by defendant disclose that the basic functions of a radio receiver are selec-

tivity, amplification and detection, all of which are performed by the chassis in their condition as imported. The power transformers and power cords have no direct relationship to those basic functions and therefore no relationship to radio reception *per se*. Thus, it is obvious that the chassis are substantially complete radio receivers.[5]

Finally, in *Daisy-Heddon* the Court of Customs and Patent Appeals ruled out the functional essentiality test in connection with General Interpretative Rule 10(h) and stated that there are five basic factors that "may" or "can" be relevant in determining whether imported merchandise missing one or more parts is substantially complete.[6] An examination of the record in this case (including plaintiff's cost analysis, exhibit 12) in light of the guidelines enumerated in *Daisy-Heddon* supports the Government's contention that the imported chassis are unfinished (substantially complete) radio receivers classifiable under item 685.23, TSUS.

III

We turn to the classification of the TINIB "amplifying packs" by Customs as audio frequency electric amplifiers under item 684.70, TSUS.

Plaintiff argues that the amplifying packs are not properly classifiable as audio frequency electric amplifiers under item 684.70 since they are incorporated into phonographs, and in their imported condition do not function until the remaining portions of the phonograph (the power transformer, the power cord and record player) are attached to it.

The *Encyclopedia Britannica* (1969 ed.), Vol. 1, pp. 830–831, states that amplifiers are utilized to "take a small signal (voltage, current or power) and produce a much larger output signal". Plainly, there is no evidence in the record which rebuts the presumption that the TINIB performs such basic function.

The obvious flaw in plaintiff's argument is that it ignores the fact that amplifiers, like the other components of the combination articles, cannot perform their intended function unless and until they are attached to the components with which they are utilized.

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[5] If plaintiff's position in this case were carried to its logical conclusion, then any sophisticated electric appliance that is imported without its power cord (or merely its plug) would have to be classified as a "part" rather than an unfinished article since the appliance could not be used for its intended purpose. This proposition is clearly untenable, as recognized by our Appellate Court in *Daisy-Heddon*, 66 CCPA at 102.

[6] These factors are: "(1) Comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and, (5) trade customs, i.e., does the trade recognize the importation as an unfinished article or as merely a part of that article" (66 CCPA at 102). The Court further stated that not all of these factors require examination in order to determine whether the imported merchandise is substantially complete, or there may be other factors necessary for the resolution of a particular case.

In short, plaintiff has failed to meet its burden of establishing that the assigned classifications for the imported chassis and amplifying packs are erroneous.

The action is dismissed; and judgment will be entered accordingly.

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, *September 10, 1981.*

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned..

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

STEEL UNITS FOR ELECTRICAL TRANSMISSION TOWERS FROM ITALY

Investigation No. 104–TAA–4

NOTICE OF CHANGE OF DATE OF PUBLIC HEARING

Notice is hereby given that the public hearing to be held in connection with United States International Trade Commission investigation No. 104–TAA–4, galvanized fabricated structural steel units for the erection of electrical transmission towers from Italy, will begin at 10 a.m., e.d.t., Friday, October 23, 1981, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. A hearing date of October 7, 1981, had previously been announced in the Commission's notice of institution of the investigation as published in the Federal Register of July 15, 1981 (46 FR 36780). Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.d.t.) October 15, 1981. All persons desiring to appear at the hearing and make oral presentations must file prehearing statements and should attend a prehearing conference to be held at 10 a.m., e.d.t., on October 16, 1981, in Room 117 of the U.S. International Trade Commission Building. Prehearing statements must be filed on or before October 16, 1981.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the

Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR 207), and part 201, subparts A through E (19 CFR 201).

By order of the Commission.

Issued: August 31, 1981.

KENNETH R. MASON,
Secretary.

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U.S. Customs Service